

## REPORT SUMMARY

<b>REFERENCE NO - 15/507487/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Variation of condition 23 of MA/12/1749 (Erection of 40 no. dwellings (including 40% affordable housing) together with public open space and new vehicle and pedestrian access from Marigold Way - pedestrian refuge - works not required by KHS			
<b>ADDRESS</b> Land off Marigold Way Maidstone Kent			
<b>RECOMMENDATION</b> GRANT REMOVAL OF CONDITION SUBJECT TO PRIOR COMPLETION OF AN APPROPRIATE LEGAL MECHANISM AND CONDITIONS			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
<ul style="list-style-type: none"> <li>- The rationale for not providing the pedestrian refuge is accepted.</li> <li>- In agreement with KCC Highways a suitable alternative mechanism for securing the permeability of the site and its relationship with the surrounding area can be secured.</li> </ul>			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
The application seeks to remove condition 23 that requires a pedestrian refuge to be provided.			
An amendment to the original s106 agreement is sought to include a requirement for a financial contribution of £10,000 towards works to include a pedestrian phase to the traffic light controlled junction at Hermitage Lane/Fountain Lane/Heath Road/St. Andrews Road. This is an additional head of term to the S106 which was not included in the original committee report that Members considered on 21 <sup>st</sup> February 2013.			
<b>WARD</b> Heath Ward	<b>PARISH/TOWN COUNCIL</b> N/A	<b>APPLICANT</b> Taylor Wimpey (South East) Ltd <b>AGENT</b> Woolf Bond Planning	
<b>DECISION DUE DATE</b> 10/12/15	<b>PUBLICITY EXPIRY DATE</b> 09/10/15	<b>OFFICER SITE VISIT DATE</b>	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
14/506629/SUB	Submission of details to discharge conditions all subject to MA/12/1749.	Permitted	14/10/15
13/2189	An application to discharge conditions relating to MA/12/1749 (erection of 40 dwellings (including 40% affordable housing) together with public open space and new vehicle and pedestrian access from Marigold Way).	Permitted	12/10/15
12/1749	Erection of 40 dwellings (including 40% affordable housing) together with public open space and new vehicle and pedestrian access from Marigold Way	Permitted	18/4/13

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.01 The application site is located within the urban confines of Maidstone, at the junction of Hermitage Lane and St Andrews Road. The site sits within the grounds of the listed former hospital, which has now been converted into flats as part of a larger comprehensive redevelopment. The application site has been redeveloped for 40 dwellings and these have now been occupied.
- 1.02 To the west of the application site is a recreation ground, containing sports pitches and children's play equipment. This is open on both the Hermitage Lane and Heath Road frontages.
- 1.03 To the east of the site are a small cluster of buildings, set behind a high ragstone wall. Further eastwards is a medical centre.
- 1.04 The application site is located within a sustainable location, within walking distance of the shopping parade upon the access road for the hospital (to the north), and to bus stops located upon the A20 (London Road) which provide a frequent service into the centre of Maidstone.

## **2.0 PROPOSAL**

- 2.01 The application seeks to remove Condition 23 attached to the original planning permission. This condition relates to the provision of a pedestrian refuge and reads as follows:

*'No occupation of the development hereby permitted shall take place until a pedestrian refuge has been provided upon Hermitage Lane (to the north of the existing traffic lights). Details of the positioning and the design of this refuge shall be submitted to, and approved by the Local Planning Authority prior to works being undertaken.'*

*Reason: In the interests of the permeability of the site, in accordance with the National Planning Policy Framework (2012).'*

- 2.02 The current planning application is as a result of an enforcement investigation as the condition requires the pedestrian refuge to be provided prior to occupation of the development. Occupation has now taken place without the provision of the pedestrian refuge.
- 2.03 The applicant has confirmed a willingness to pay a financial contribution of £10,000 (in lieu of the pedestrian refuge) towards the provision of pedestrian phasing at the traffic lights on the crossroad of Hermitage Lane/Fountain Lane/Heath Road/St. Andrews Road.

## **3.0 PLANNING CONSTRAINTS**

Potential Archaeological Importance

Listed Buildings MBC and SBC Ref Number: 368/MA

Description: Grade II listed wall to the south of Oakwood Hospital, ST ANDREW'S ROAD, M

Tree Preservation Order Polygon MBC SBC Reference: 1039/TPO

Description: Oakwood Hospital, Maidstone, Kent.

#### **4.0 POLICY AND OTHER CONSIDERATIONS**

The National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)  
Development Plan:

Maidstone Borough Wide Local Plan 2000  
Policy T1 : Transport strategy  
Policy T21 : Accessibility of New Developments  
Policy T23 : Need for Highway/Public Transport Improvements

Open Space DPD 2006

Maidstone Borough Local Plan (submitted version) May 2016  
Policy DM1 : Principles of good design  
Policy DM2 : Sustainable design  
Policy DM22 : Open space and recreation  
Policy DM24 : Sustainable transport  
Policy DM25 : Public Transport  
Policy ID1 : Infrastructure Delivery

#### **5.0 LOCAL REPRESENTATIONS**

- 5.01 Adjoining neighbours were notified of the planning application as originally submitted. A site notice was also put up at the site. No representations have been received.

#### **6.0 CONSULTATIONS**

##### **Kent Highways**

- 6.01 For safe construction reasons (and any subsequent maintenance) it is not viable to build a central island (the pedestrian refuge required by condition 23) as originally proposed, without a road closure. A road closure on Hermitage Lane is not viable not least due to the proximity of Maidstone Hospital with its associated emergency facilities.
- 6.02 The proposal is to provide a pedestrian crossing facility. This is not achievable through a central island but can be achieved via a pedestrian crossing phase in front of the stop lines associated with the Hermitage Lane, Heath Road, St Andrews Road, Fountain Lane road junction and adjacent to the recreation ground. There will need to be some civils/construction work on the corner of the recreation ground for pedestrians to stand/wait.
- 6.03 A financial contribution was secured through the s106 agreement attached to the planning permission for the site on land to the south west of, Oakapple Lane. This application under reference 13/2079 was for outline planning application with all matters reserved for the demolition of existing structures and erection of up to 80 dwellings with associated works for access, parking, infrastructure, open space and landscaping. The additional provision of £10,000 from the current development will assist in the funding of necessary works. With a total cost of £120,000 it is recommended that the repay period within the s106 agreement is 10 years. It should be noted that an 'all red' phase to traffic would also be required as part of the pedestrian works which would add to the congestion issues at this junction.

#### **7.0 BACKGROUND PAPERS AND PLANS**

None

## 8.0 APPRAISAL

### Background

8.01 Planning permission was granted for a development of 40 dwellings together with public open space and new vehicle and pedestrian access from Marigold Way under reference MA/12/1749. The application was resolved to be approved by the Planning Committee at the 21<sup>st</sup> February 2013 meeting. (Copy of the report is appended to the Agenda). The application was granted subject to a number of conditions and a S106 agreement.

8.03 Kent Highways in their comments on the original application stated that *'The installation of a pedestrian refuge to the north of the traffic lights should be investigated.'* Officer's comments at paragraph 5.6.7 of the Committee Report subsequently advised that :

*'The applicant has been asked to investigate the opportunity of providing a pedestrian refuge to the north of the existing traffic lights, to enable safer crossing to the playing fields opposite. I consider that this would be of significant benefit and would seek to condition its provision accordingly should permission be granted.'*

8.04 These comments translated into condition 23 of the consented scheme which reads as follows:

*'No occupation of the development hereby permitted shall take place until a pedestrian refuge has been provided upon Hermitage Lane (to the north of the existing traffic lights). Details of the positioning and the design of this refuge shall be submitted to, and approved by the Local Planning Authority prior to works being undertaken.'*

*Reason: In the interests of the permeability of the site, in accordance with the National Planning Policy Framework (2012).'*

8.05 With the development completed and the approved dwellings occupied, the development is in breach of condition 23. This current application seeks to regularise this situation and remove Condition 23. No other aspects of the approved development are affected, and as a result the assessment purely relates to the requirements of condition 23.

### Highways impact

8.07 The original planning condition followed from comments received from KCC Highways. A pedestrian refuge to the north of the existing traffic lights was put forward to provide improved access from the eastern footway on Hermitage Lane to the open space (recreation ground) on the opposite side of the road (corner of Hermitage Lane/Heath Road).

8.08 After further assessment KCC Highways have now confirmed that they not wish to see the provision of the pedestrian refuge that is required by condition 23. Whilst the benefits are acknowledged, KCC highways consider that these benefits would be outweighed by the disruption that would be caused by the construction works that

would be required. These works would involve road closures for the construction and future maintenance of the refuge and this would have an unacceptable impact on the road network in the vicinity of the hospital.

- 8.09 In addition to considering the disruption that would be caused by the pedestrian refuge works, it is considered that the benefit to pedestrian movement can be satisfactorily achieved through alternative means. It is considered that the benefit for pedestrians can be achieved from changes made to the phasing of the existing traffic lights at the cross-road junction of Hermitage Lane/Heath Road/St Andrews Road. These traffic lights do not currently benefit from pedestrian phasing. #
- 8.10 KCC highways have highlighted that an 'all red' phase to traffic would also be required as part of the pedestrian works which would add to the congestion issues at this junction. Whilst further potential congestion is unfortunate it is considered that the benefits to pedestrian movement and safety would outweigh the delay to vehicles.

#### Compliance with s106 tests

- 8.11 A planning obligation needs to meet the following three tests, in that the planning obligation needs to be:
- Necessary to make the development acceptable in planning terms
  - Directly related to the development
  - Fairly and reasonably related in scale and kind to the development
- 8.12 It is considered that improvements to pedestrian access are necessary to make the development acceptable in planning terms and it is for this reason that the condition was attached to the original planning permission. As such it remains to be the case that improvements to the permeability of the site and its links to the recreation ground are an important aspect of the development.
- 8.13 The pedestrian phasing to the traffic lights is directly related to the development. The application site borders the crossroad junction and is by far the closest development to the traffic lights and access to the recreation ground would be beneficial for the occupants of the development.
- 8.14 A contribution figure of £406/dwelling has been requested from the applicant, this would total £16240. The applicant has advised that they are willing to pay a contribution of £10000. This reduced sum is due to the figure reflecting the cost of supplying a pedestrian refuge. In the absence of information to the contrary or Kent Highways raising issue with this figure this lower sum in this case is considered fair and reasonable.

#### Other matters

- 8.15 Two duplicate applications were submitted for the discharge of the conditions on the original planning application, with these applications determined within days of each other. It is considered that the later application is relevant under reference 14/506629/SUB.

### **9.0 CONCLUSION**

- 9.01 The rationale for removing the condition that requires the provision of the pedestrian refuge is accepted. With the reasons behind the original condition its removal is acceptable on the basis that an alternative provision is made to improve/ensure the permeability of the site.

9.02 This alternative provision is sought through the securing of a contribution towards a pedestrian phase at the nearby traffic lights. Subject to a legal agreement to secure a financial contribution towards provision of the pedestrian phase the removal of the planning condition is acceptable.

**10.0 RECOMMENDATION** – That subject to the prior completion of a Section 106 legal agreement or deed of variation in such terms as the Head of Legal Services may advise to secure the following:

Variation to legal agreement

- Secure £10000 for pedestrian improvements/phasing to the traffic light signals on the crossroads of Hermitage Lane/Fountain Lane/Heath Road/St. Andrews Road.
- Link the original S106 to a reissued planning permission hereby approved that permits the development to proceed without the requirement to comply with condition 23.

The Head of Planning and Development be given DELEGATED POWERS TO GRANT permission subject to the conditions and informatives set out below:

- (1) The development shall be constructed in accordance with the materials approved under application reference 14/506629/SUB.

Reason: To ensure a satisfactory appearance to the development

- (2) The fencing, walling and other boundary treatment shall be maintained in accordance with the detail approved under application reference 14/506629/SUB.

Reason: To ensure a satisfactory appearance to the development and to safeguard the enjoyment of their properties by existing and prospective occupiers.

- (3) The refuse storage facilities shall be maintained in accordance with the details submitted and approved under application reference 14/506629.

Reason: In the interest of amenity.

- (4) The colour of the external finish of the buildings shall be maintained in accordance with the details approved under application reference 14/506629/SUB.

Reason: In the interests of visual amenity

- (5) The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety

- (6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure a satisfactory setting and external appearance to the development

- (7) The landscaping scheme shall be implemented and managed in accordance with the details submitted and approved under application reference 14/506629/SUB.

Reason: To ensure a satisfactory setting and external appearance to the development.

- (8) The landscape management plan approved under application reference 14/506629 shall carried out in accordance with the approved plan over the period specified.

Reason: To ensure satisfactory maintenance and management of the landscaped area.

- (9) No lighting other than that approved under application 14/506629 shall be erected or placed within the site without prior application to the Local Planning Authority.

Reason: To prevent light pollution in the interests of the character and amenity.

- (10) No development shall be carried out in accordance with the large scale drawing details submitted and approved under application reference 14/506629/SUB.

Reason: To ensure a satisfactory external appearance to the development in the interests of the visual amenity and character of the surrounding area

- (11) The development shall be carried out in accordance with the foul and surface water drainage details submitted and approved under application reference 14/506629/SUB.

Reason: In the interest of pollution and flood prevention.

- (12) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, a remediation strategy detailing how this unsuspected

contamination shall be dealt with. The remediation strategy shall be implemented as approved.

Reasons: To protect vulnerable groundwater resources

- (13) The open areas within the residential development site shall remain open and available for public access and no fences, gates or other means of enclosure shall be placed or erected to preclude access to these areas at any time without the prior approval of the Local Planning Authority.

Reason: In the interests of permeability throughout the site, and to maintain the character and appearance of the landscaped areas.

- (14) No external meter cupboards, vents, or flues shall be installed on any external elevation without the prior agreement in writing of the Local Planning Authority.

Reason: To secure a high standard of design.

- (15) Development shall be carried out in accordance with the ragstone wall and brickwork sample panel approved under application reference 14/506629.

Reason: To ensure a high quality design.

- (16) The development hereby permitted shall be carried out in accordance with the ecological study submitted on the 26 September 2012. No occupation of the development shall take place until the mitigation proposed within the ecological report has been fully implemented.

Reason: To ensure enhancements to the biodiversity of the area, and to ensure that the development as a whole is of a high standard of (landscape) design

- (17) Development shall be carried out in accordance with the programme of archaeological work and written specification and timetable approved under application reference 14/506629/SUB.

Reason: To enable the recording of any items of historical or archaeological interest

- (18) No occupation of the development hereby permitted shall take place until the pedestrian access to St Andrews Road has been provided in accordance with the details submitted.

Reason: In the interests of the permeability of the site.

#### INFORMATIVES

- (1) Attention is drawn to Sections 60 and 61 of the Control of Pollution Act 1974 and to the Associated British Standard Code of practice BS5228:1997 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager regarding noise control requirements.



- (2) The importance of notifying local residents in advance of any unavoidably noisy operations, particularly when these are to take place outside of the normal working hours is advisable.
- (3) The developer shall implement a scheme for the use of wheel cleaning, dust laying and road sweeping, to ensure that vehicles do not deposit mud and other materials on the public highway in the vicinity of the site or create a dust nuisance.
- (4) You are advised to ensure that the appointed contractor(s) is/are registered with the 'Considerate Constructors Scheme' and that the site is thereafter managed in accordance with the Scheme. Further information can be found at [www.considerateconstructorsscheme.org.uk](http://www.considerateconstructorsscheme.org.uk)
- (5) No vehicles may arrive, depart, be loaded or unloaded within the general site, and plant and machinery shall not be operated, that would generate noise beyond the boundary of the site, except between the hours of 0800 hours and 1800 Mondays to Fridays and 0800 and 1300 hours on Saturdays (and at no time on Sundays or Bank or Public Holidays).
- (6) Within any submitted landscape plan, full details of the retention of cordwood within the site shall be submitted.

Case Officer: Rachael Elliott

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.